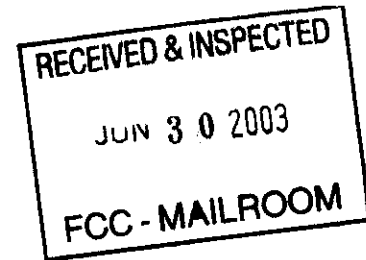


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SIGNED ORIGINAL

KRZB (FM)
Texas Grace Communications
P.O. Box 8481
Gulfport, MS 39506
(228) 388-9011



June 26, 2003

Ms. Marlene Dortch, Secretary
Federal Communications Commission
9300 E. Hampton Drive
Capitol Heights, MD 20743

MB Docket No. 03-116
Commenter Facility ID No. 79024
BMPH-19990217IB

***Re: KRZB/Archer City, TX Comments on Notice of
Proposed Rulemaking under MB Docket No. 03-116.***

Dear Ms. Dortch,

On behalf of Texas Grace Communications, permittee of KRZB/Archer City, please find enclosed an Original, plus (4) copies, and a Stamp In & Return Copy, of the attached Comments.

Please immediately stamp-in with today's receipt date, and then please **urgently direct this filing to Chief Peter Doyle at the Audio Division of the Media Bureau.**

Please return the Stamp In & Return Copy to me, in the postage-paid envelope provided.

The Secretary's courtesy is appreciated. Any questions, please feel free to call the undersigned.

Sincerely,

A handwritten signature in cursive script that reads "Dave Garey".

Dave Garey
Proprietor, Texas Grace Communications
Enc: Signed Original, (4) Copies, + Stamp In & Return Copy

No. of Copies rec'd 0+4
List ABCDE

SIGNED ORIGINAL



BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

RECEIVED & INSPECTED

JUN 30 2003

FCC - MAILROOM

In the Matter of:

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Archer City, Texas)

MB Docket No. 03-116

KRZB (FM), Archer City, TX
Facility # 79024
File # BMPH-19990217IB

To: The Chief, Audio Division
Media Bureau

RESPONSE TO FCC NOTICE OF PROPOSED RULEMAKING UNDER MB DOCKET

NO. 03-116, AFFIRMING AUTHORIZATION/ALLOCATION OF THE 97.5/C2

KRZB/ARCHER CITY PERMITTED SERVICE UNDER CURRENT FCC GRANT

Texas Grace Communications ("Grace"), proprietor of the KRZB/Archer City, Texas C2 "permitted" service captioned above, hereby files the instant comment in response to the Notice of Proposed Rule Making ("NPRM") under MB Docket No. 03-116¹.

KRZB/Archer City Fully Supports Proper Classification and Affirmation of its C2 Permitted Authorization Status.

The cornerstone of the NPRM is a proposal put forth by the FCC that calls for "reclassification" of the outstanding C1 allotment for a potential KRZB/Archer City C1 service, to reflect its actual C2 permitted service granted by the FCC, without any stated encumbrance to construction or operation, effective February 7, 2000². The C2 permitting marks the sole service

¹ The FCC states that comments are due on or before June 30, 2003; the instant filing is therefore timely.

permit ever held by Grace for KRZB/Archer City, with the specified service and site coordinates (33-51-40 and 98-38-52) designated under BMPH-19990217IB.

Grace fully supports the FCC's NPRM insofar as properly classifying the KRZB/Archer City service as a C2 allocation/authorization, corresponding to the FCC-permitted service, as referenced.

However, while Grace supports the FCC in appropriately affirming the C2 classification, we must respectfully state for the record that it was Grace's belief that the C2 classification called for in the NPRM was already in place, or should have been in place as a matter of law.

The Timeline of the KRZB/Archer City C2 Permit Granting---After the C1 Upgrade Option was Already in Effect---Supports Grace's Position that the C2 Service Represents a Valid, Protected Authorization.

This is demonstrated by the material fact that, on February 7, 2000, the FCC granted KRZB/Archer City permitted status as a C2 service, with absolutely no encumbrance to construction or ultimate operation specified as a condition of the permitting. The NPRM notes that this key event whereby the FCC granted KRZB/Archer City its C2 permitted status took place *after* the noted outstanding C1 allocation option had already become effective (which occurred on January 18, 2000). Given the timeline sequence, the FCC was very much aware of the outstanding C1 allocation option when it nonetheless elected to grant KRZB permitting as a C2 service. That very permitting made the KRZB/Archer City's C2 service a sovereign entity, with Grace's right to construct and operate the specified facility---a C2 facility---warranted by the integrity and authority of the FCC itself.

² Under FCC 01-317, the KRZB/Archer City C2 service permitting was granted an additional (3) unencumbered year period of time for construction, effective October 26, 2001.

KRZB/Archer City Permitting Precedent Holds that any Obstruction to Free and Clear Construction Should be Enumerated on the Face of the CP Upon its Grant, and Should Not be Counted Against the Lifespan of Construction Time.

By precedent in the life of KRZB/Archer City's own permitting process, a permit prematurely issued (on November 30, 1999) was voluntarily rescinded by the FCC, when it was discovered that there was an encumbrance/condition specified on the face of the permit hindering free and clear authority to construct and operate the facility. This precedent is noteworthy on two grounds. First, the FCC demonstrated a policy of enumerating upon the permit itself any condition that might obstruct a permittee's right to free and clear construction and operation of a facility specified on a permit. Secondly, the FCC demonstrated a policy of not counting risk conditions to free and clear construction and operation of the permit's specified facility against the permittee's time frame of construction. Rather, an FCC-granted construction "permit" is indeed a granting of a permittee's protected right to construct and operate the specified facility without encumbrance. Anything less would simply not constitute granted permitting.

The (3) Unencumbered-Year Grant of the KRZB/Archer City Construction Permit by FCC Order 01-317 in October, 2001 Clearly Evidences the Facility's Protected C2 Authorization Status.

In further evidence supporting the fact that the current classification of KRZB/Archer City is indeed that of a permitted, protected C2 authorization, Grace provides the material fact of the Order under FCC 01-317, whereby KRZB/Archer City's sole permitting---as the specified C2 service under BMPH-19990217IB---was granted a full (3) year period for unencumbered construction. Again, this was not conditioned upon a move to a C1 service at alternative coordinates, or upon any other matter. The FCC 01-317 Order's effective date was October 26,

2001, which, once again, is an event occurring after the implementation of the C1 allocation option.

FCC Grant of Unprotected, Obstructed, Non-Service-Permitting Construction Permits Would be a Contradiction.

Grace respectfully points out that, if indeed the FCC considered the outstanding (or perhaps simultaneous is a better chosen word) C1 allocation to be an obstruction to free and clear construction of KRZB/Archer City as a permitted C2 service on February 7, 2000, and again on October 26, 2001, then the FCC had no business granting the C2 permitting status. On the contrary, the FCC had an obligation to reject grant of the KRZB/Archer City 301 application until the alleged impediment condition---the conflicting C1 allocation---could be cured by a Grace proposal for the C1 allocation option's rescinding. Certainly, the FCC had an obligation to, at the very least, inform KRZB/Archer City that the simultaneous C1 allocation posed conflict with the right to free and clear construction and operation of KRZB/Archer City as a C2 service--prior to granting permitting status of the C2 entity. Had Grace been made aware of such conflict, or had the FCC itself believed the conflict to exist back in February, 2000, for example, Grace and the FCC could have both mitigated and eliminated the conflict. But again, once grant of permitting status is made, the FCC is effectively declaring that entity which is permitted to be a protected authorization. In the case of KRZB/Archer City, the FCC's granting of two separate C2 construction permittings (the initial unencumbered grant on February 7, 2000, and the (3) year unencumbered extension on October 26, 2001, both tied to the same permit specifying the same C2 service and site coordinates) after the C1 allocation was technically in existence made the C2 service a de facto, legally-valid authorization of protected status³.

In the alternative, a precedent would be set that any FCC construction permit granted on or after February 7, 2000 could be encroached upon by other parties desiring portions of the spectrum space accorded a permittee, and therefore that no granted construction permit actually authorizes free and clear construction and operation of the specified facility “permitted.”

Top-Ranking FCC Officials Assisted KRZB/Archer City in Corroborating the Valid Status of its Permitting After Grant of the 3-Year Extension; Grace Believes This Equates to Evidencing a Valid, Protected Authorization for Construction and Operation on the Permit.

Further material evidence demonstrating that the FCC viewed the KRZB/Archer City C2 construction permit as a valid authorization granting the permittee’s right to free and clear construction and operation of the specified C2 facility, is seen in correspondence to Grace from Audio Division Chief Peter Doyle and General Counsel Jane Mago (incorporated by reference). Both Doyle and Mago provided correspondence in support of KRZB/Archer City’s validity as a permitted entity after the October 26, 2001 grant of (3) unencumbered years to construct the C2 facility, requested by Grace because the hard copy permit it held had technically expired on February 7, 2001. When Grace explained to Doyle that it needed a cover letter to be able to show lenders, vendors and governmental authorities regarding the post-October, 2001 validity of the KRZB/Archer City C2 service permitted status, Doyle provided a courtesy letter and e-mail affirming the legality and viability of such status, for which Grace is grateful. Again, a valid FCC-granted construction permit must, by definition, permit free and clear construction of a particular facility over a specified timeframe---precisely the status deemed to apply to the

³ This point is strongly emphasized in the NPRM itself, at p. 1, par. 2, #2, wherein the FCC states, “Thereafter, in a *Memorandum Opinion and Order* released October 26, 2001, the Commission extended the construction deadline for the Class C2 Construction Permit until October 26, 2004.” Noteworthy here is that the FCC makes clear that it is the C2 service for which the FCC has granted permitting through the October, 2004 date. By such action, the FCC definitively authorized an unencumbered construction timeframe for KRZB/Archer City as a permitted, protected C2 service.

KRZB/Archer City C2 permitted service by these key FCC officials more than 18 months after the C1 allocation existed.

The C2 Authorization Existed Simultaneous to the Potential C1 Upgrade.

Material fact evidence that the C1 upgrade option had a limited, time-sensitive shelf life for prosecution into a potential permit evidences that the FCC indeed considered a KRZB/Archer City C2 facility the equivalent of a simultaneous authorization, and a power class to which the ultimate authorization would have to be relegated if the C1 upgrade was not applied for. This is demonstrated at p. 1, par. 2, #2 of the NPRM, wherein the FCC states, “The *Order* also was conditioned upon Texas Grace filing an application to implement this upgrade (to a C1) within 90 days of the *Order's* effective date...”. The Order provided no penalty with respect to any pending loss of Grace’s right to receive grant of a permitted C2 service in the event it did not prosecute the C1 upgrade; rather, the only penalty alluded to in such instance was missing out on the upgrade. Indeed, this phenomenon is further corroborated by the FCC’s own actions, as referenced, in granting the first-ever KRZB/Archer City construction permit---the permitted C2 service held by Grace today---within a month after the effective date of the Order allowing the power upgrade.

Grace Made Clear to the FCC at the Conclusion of the Obstructing MM Docket No. 99-23 Proceeding That it Wanted to Prosecute Grant of the Pending 301 Application for a Permitted C2 KRZB/Archer City Service.

Moreover, the settlement filing by KRZB/Archer City’s then-consulting attorney John Trent in the MM Docket No. 99-23 proceeding clearly stated that, despite allowance to apply for the C1 power increase⁴, Grace intended to prosecute its pending C2 service permit under BMPH-

19990217IB, and, as such, asked for expedited processing of a grant of the C2 permit in tandem with the proceeding's closure. The FCC honored this request, again evidencing that the FCC considered KRZB/Archer City to remain a valid, protected C2 authorization despite the existence of the C1 allotment upgrade option.

We Agree with the FCC That There is Profound Interest in the 97.5 Frequency in Archer City, and That Proper Classification of the Service Will be in the Public Interest.

Grace agrees with the FCC that there has been pronounced interest in using the 97.5 spectrum space "in the geographical vicinity of Archer City." However, the motivation to wrest the spectrum space away from KRZB/Archer City has not been related to the desired "introduction of additional service to many communities." Rather, as the FCC well knows, the efforts to garner this particular channel have been driven solely by the desire to facilitate yet another Dallas-area move-in, without regard for protecting the permitted co-channel C2 service in its way at KRZB/Archer City. The public trust definitely compels the FCC to honor the protected status of the permitted KRZB/Archer City C2 service (i.e., guaranteeing the free and clear right to construct and operate the specified facility). Concurrently, this should provide a deterrent to unscrupulous daisy chains and attempted Dallas move-in proposals seeking to take advantage of any confusion about the FCC's classification of the KRZB service.

It is a Slippery Slope for the FCC to Knowingly Issue Permits That are Invalid for Protected Construction/Operation of a Broadcast Station; FCC Contention That KRZB/Archer City's

⁴The NPRM implies that KRZB/Archer City came forward out of the blue to request a power upgrade. In reality, this was a by-product of the proceeding under MM Docket No. 99-23, wherein Grace's engineer discovered an obstructive drop-in channel at Tipton, OK precluding usage of the intended KRZB/Archer City transmission site. In tandem with discovering that the obstructive drop-in channel tied directly to the personal post office box taken out by Mark Lipp's engineering associate in the proceeding, Grace, as part of a showing that KRZB/Archer City would serve more people than the Tipton channel, contemplated the C1 upgrade. But at the same time, Grace made clear in its closure filing to the FCC with the other parties in the *Tipton, Mangum, et al* proceeding that it fully intended to prosecute the C2 service at KRZB/Archer City, pending grant of a permit whose release had been held up for a year pending disposition of the proceeding.

C2 Service Permit has Effectively Never Been a Protected Entity (Because of the Outstanding C1 Allocation) Compels Approval of our Separate Request for Tolling.

We respectfully note that it is the FCC, not Grace, that granted the KRZB/Archer City C2 permit which has recently been alleged to *not* protect the construction or operation of the service, power class, or facilities site it purports to “permit.” Such allegation, in Grace’s opinion, would constitute an admission that the FCC knowingly issued invalid grants of construction permits to KRZB/Archer City. It further justifies our tolling request (under separate pleading) connected to the time the FCC pronounced that KRZB/Archer City’s FCC-permitted service was indeed encumbered, in its failure to allow the free and clear construction and operation of the designated C2 facility.

The Audio Division Chief’s Interest in Properly Classifying KRZB/Archer City’s C2 Permitted Service is Appreciated.

While KRZB/Archer City maintains that it is---and should always have been---a protected authorization during any and all times of its valid C2 permitted status, Grace nonetheless appreciates the interest of the Audio Division Chief in initiating the NPRM, and in seeing through its intended result of properly classifying the KRZB/Archer City service as a protected C2 allocation appropriately tied to the facilities site and power class specified on the currently-valid KRZB/Archer City construction permit.

I, Dave Garey, proprietor of Texas Grace Communications, do hereby verify that the statements contained within the instant document are true and correct to the best of my knowledge and belief. The FCC, along with any other interested parties wishing to respond to the instant document, are asked to utilize Grace's service address as noted below.

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Dave Garey", is written over a horizontal line.

June 26, 2003

Dave Garey, Proprietor
Texas Grace Communications
P.O. Box 8481
Gulfport, MS 39506